

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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A.G., an infant under the age of fourteen (14)  
years, by his mother and natural guardian,  
Villona Maryash, and VILLONA MARYASH,  
individually,

Plaintiffs,

-against-

Starbucks Coffee Company,

Defendant.

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NICHOLAS G. GARAUFI, United States District Judge.

Before the court is a report and recommendation ("R&R") by Magistrate Judge Robert M. Levy that the complaint of Villona Maryash and her minor son, A.G., against Starbucks Coffee Company ("Starbucks") be dismissed for failure to prosecute. (Docket Entry # 16.) Because Maryash has neither appeared at any scheduled conferences since May 2011 nor procured a lawyer for her son—as directed by Judge Levy—the court adopts the R&R in its entirety and dismisses the complaint with prejudice.

The record shows that Maryash and A.G. have abandoned their case. They originally filed the complaint in state court, where they asserted that A.G. was injured in a Brooklyn Starbucks when Maryash dropped a cup of tea that was too hot to hold. (See Docket Entry #1.) Starbucks removed the case in the Fall of 2010 (id.), at which time it was assigned to Magistrate Judge Robert M. Levy for all non-dispositive pretrial matters, see Local Civil Rule 72.2 (Eastern District Only). After granting Maryash's motion to fire her and A.G.'s attorneys, Judge Levy

D/R  
**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ DEC 09 2011 ★  
**BROOKLYN OFFICE**

**ORDER**

**10-CV-4185 (NGG) (RML)**

instructed Maryash to find a another lawyer for A.G.<sup>1</sup> (Order and Minute Entry dated 5/19/2011.) Judge Levy gave Maryash until September 30, 2011—over four months—to obtain new counsel for her son, and scheduled a status conference for October 12, 2011. (Id.) September 30 came and went and no attorney filed a notice of appearance on A.G.’s behalf. (See Minute Entry dated 10/12/2011.) When Judge Levy held the October 12 status conference, neither Maryash nor her son appeared. (Id.) At this point, Judge Levy scheduled a second status conference for November 3, 2011 and warned that “Ms. Maryash MUST ATTEND IN PERSON if she wishes to continue this lawsuit” and that “[f]ailure to appear will result in a recommendation that her claims be dismissed.” (Id.) Marash did not appear in court on November 3, and the R&R followed soon after.

Because the time for Maryash to object to the R&R has passed, see Fed. R. Civ. P. 72(b)(2), the court reviews the R&R for clear error, see 28 U.S.C. § 636(b)(1). Where a party “fails to appear to appear at a scheduling or other pretrial conference” or where a party “fails to obey a . . . pretrial order” a federal court may dismiss the action. See Fed R. Civ. P. 16(f)(1); Fed R. Civ. P. 37(b)(2)(A)(v). Maryash failed to appear at two status conferences and disobeyed Judge Levy’s order that she find a new lawyer for her son. His recommendation that the case be dismissed was thus appropriate, and the court adopts it in its entirety. See Porter v. Potter, 219 F. App’x 112, 113 (2d Cir. 2007).

The case is dismissed.

SO ORDERED.

Dated: Brooklyn, New York  
December 8, 2011

s/Nicholas G. Garaufis  
NICHOLAS G. GARAUFIS  
United States District Judge

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<sup>1</sup> Minors may not proceed pro se, nor may a pro se parent sue on their behalf. See Cheung v. Youth Orchestra Foundation, Inc., 906 F.2d 59, 61-62 (2d Cir. 1990).